

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton;
Tony Hammond; and
Nanci E. Langley

Complaint of GameFly, Inc.

Docket No. C2009-1R

Competitive Product List
Adding Round-Trip Mailer

Docket No. MC2013-57

Competitive Product Prices
Round-Trip Mailer (MC2013-57)

Docket No. CP2013-75

ORDER GRANTING REQUESTS FOR ACCESS

(Issued August 26, 2013)

On August 23, 2013, GameFly, Inc. (GameFly) filed a motion pursuant to 39 C.F.R. § 3007.40 for access to the nonpublic library reference USPS-MC2013-57/NP2 filed by the Postal Service on August 22, 2013.¹ Signed copies of Appendix A of 39 C.F.R. part 3007 are included with the GameFly Motion. Netflix, Inc. (Netflix) also filed a motion pursuant to 39 C.F.R. § 3007.40 on August 23, 2013, for

¹ Motion of GameFly, Inc., for Access to Nonpublic Library Reference USPS-MC2013-57/NP2, August 23, 2013 (August 23 GameFly Motion). See also Notice of Filing of Nonpublic Library Reference USPS-MC2013-57/NP2, August 22, 2013.

access to non-public library reference USPS-MC2013-57/NP2.² The Netflix Motion is accompanied by signed copies of Appendix A of 39 C.F.R. part 3007. GameFly filed a second request for access to portions of the library reference on August 26, 2013.³

Both GameFly and Netflix acknowledge willingness to comply with protective conditions and identify the individuals to be granted access. *Id.*, August 23 GameFly Motion at 2. GameFly and Netflix state that the individuals they identify have previously been granted access to non-public material in the above-captioned dockets. August 23 GameFly Motion at 2; Netflix Motion at 2. Both Motions assert that access to the library reference is necessary to determine whether further response is necessary. Netflix Motion at 1; August 23 GameFly Motion at 1-2.

GameFly states that the Postal Service consents to its Motion. August 23 GameFly Motion at 2. Netflix states that it does not oppose the GameFly Motion and that GameFly consents to the Netflix Motion. Netflix Motion at 2. The Postal Service does not oppose the Netflix Motion. Notice of Withdrawal at 1-2.

On August 26, 2013, the Postal Service withdrew library reference USPS MC2013-57/NP2 and re-filed the contents, with redactions, as library references USPS MC2013-57/NP3, USPS MC2013-57/NP4, USPS MC2013-57/NP5, and USPS MC2013-57/NP6.⁴

Because the library references filed on August 26, 2013, contain substantially the same information as library reference USPS MC2013-57/NP2, the Commission will deem the GameFly Motion and the Netflix Motion to be motions for access to the library references filed on August 26, 2013. The Postal Service does not oppose this treatment. Notice of Withdrawal at 1. Accordingly, GameFly and Netflix are granted access to library references USPS MC2013-57/NP3, USPS MC2013-57/NP4, USPS

² Motion of Netflix, Inc. for Access to Nonpublic Library Reference USPS-MC2013-57/NP2, August 23, 2013 (Netflix Motion).

³ Motion of GameFly, Inc., for Access to Nonpublic Library Reference USPS-MC2013-57/NP2, August 26, 2013 (August 26 GameFly Motion).

⁴ Notice of Withdrawal of Library Reference USPS-MC2013-57/NP2, August 26, 2013 (Notice of Withdrawal).

MC2013-57/NP5, and USPS MC2013-57/NP6, effective upon the issuance of this Order.

It is ordered:

1. The August 23, 2013, Motion of GameFly, Inc., for access to non-public library reference USPS-MC2013-57/NP2 and the Motion of Netflix, Inc. for access to non-public library reference USPS-MC2013-57/NP2 are deemed to be motions for access to library references USPS MC2013-57/NP3, USPS MC2013-57/NP4, USPS MC2013-57/NP5, and USPS MC2013-57/NP6.
2. GameFly and Netflix are granted access to library references USPS MC2013-57/NP3, USPS MC2013-57/NP4, USPS MC2013-57/NP5, and USPS MC2013-57/NP6, effective upon the issuance of this Order.
3. The August 26, 2013, Motion of GameFly, Inc., for access to non-public library reference USPS-MC2013-57/NP2 is moot.

By the Commission.

Shoshana M. Grove
Secretary